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THE
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OF THE
OHIO COMPANY.

READ BEFORE THE
CINCINNATI LITERARY CLUB,

JUNE 4th, 1881.

BY

E. C. DAWES.

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PETER G. THOMSON.
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THE BEGINNING OF THE OHIO COMPANY.

The beginning of the year 1783 saw the Revolutionary war virtually at an end, although the final treaty of peace was not signed until September third. The colonies had achieved their independence at the price of the lives of many, and the fortunes of all, of their defenders. The Continental currency, despite the fiat of the government, had long since ceased to be of value. Since 1780 all army supplies had been purchased with interest bearing notes, payable in coin, issued by the Quartermaster General by authority of Congress. These were known as "Continental specie certificates," and had depreciated to about one-sixth their par value. The troops were about to be disbanded; there was no money to pay them. Many meetings were held among the officers and many plans for securing the arrearages of pay discussed. All conferences came to the same conclusion. The United States had no credit upon which to borrow money, no power to enforce the collection of a tax, no property with which to pay its debts. The only apparent resource was the land west of the Alleghanies belonging to the Indians, the English claim to which had been ceded to the United States by the preliminary articles of peace made known in America in March, 1783. Even there some of the States claimed prior rights. Hoping

by successful revolution to acquire these lands, Congress had, in 1776 and 1780, agreed to give certain amounts to all officers and soldiers who should serve through the war or become disabled in it. About the first of April 1783, Colonel Timothy Pickering, then Quartermaster General, drew up the points of a proposition, to be made to Congress on behalf of the Army, for the formation of a new State, west of the Ohio river, as follows:—

“ Proposition* for settling a new State by such officers and soldiers of the Federal army, as shall associate for that purpose.”

“ 1. That the United States purchase of the natives that tract of country that is bounded by Pennsylvania on the east, the river Ohio on the south, a meridian line drawn thirty miles west of the river Scioto on the west,—this meridian line to run from the Ohio to the Miami River, which runs into Lake Erie,—and by this river and Lake Erie on the north.

“ 2. That, in the first instance, lands be assigned to the army to fulfill the engagements of the United States by the resolutions of the 16th of September, 1776, August 13th and September, 30th, 1780, to-wit:

To a major-general.....	1,100 acres
To a brigadier-general.....	850 “
To a colonel	500 “
To a lieutenant-colonel.....	450 “
To a major	400 “
To a captain.....	300 “
To a lieutenant.....	200 “
To a ensign, or cornet.....	150 “
To a non-commissioned officer or soldier.....	100 “
To the director of the military hospitals.....	850 “
To the chief physician and purveyor, each.....	500 “
To physicians, surgeons and apothecary, each.....	450 “

* Life of Timothy Pickering, Volume 1, page 546.

To regimental surgeons, and assistants to the purveyor and
apothecary, each..... 400 acres.
To hospital and regimental surgeons' mates, each..... 300 "

" 3. That all associators who shall actually settle in the new State, within one year after the purchase shall be effected, and notice given by Congress or the committee of the associators, that the same is ready for settlement (such notice to be published in the newspapers of all the United States), shall receive such additional quantities of land as to make their respective rights in the whole to contain the following numbers of acres, to-wit :

A major-general.....2,400 acres
A brigadier-general.....2,200 "
A colonel2,000 "
A lieutenant-colonel.....1,800 "
A major.....1,600 "
A captain.....1,400 "
A lieutenant.....1,200 "
A ensign or cornet.....1,000 "
A sergeant..... 700 "
Other non-commissioned officers and soldiers, each..... 600 "
and 50 acres more for each member of a family, besides the head of it.

" 4. That the rights of the officers in the medical department be increased in like manner on the same condition.

" 5. That all officers in the other staff departments, who shall actually settle in the new State within the time above limited, shall receive rights of land in the proportions last stated, on an equitable comparison of their stations with the ranks of the officers of the line and the medical staff.

" 6. That this increased provision of lands shall extend to all officers of the line and staff, and to all non-commissioned officers and soldiers, who, during the present war, have performed in the whole three years' service, whether in service or not at the close of the war, provided they present their claim and become actual settlers in the new State by the time above limited.

“ 7. These rights being secured, all the surplus lands shall be the common property of the State, and disposed of for the common good ; as for laying out roads, building bridges, erecting public buildings, establishing schools and academies, defraying the expenses of government, and other public uses.

“ 8. That every grantee shall have a house built, and ——— acres of land cleared on his right within ——— years, or the same shall be forfeited to the State.

“ 9. That to enable the associators to undertake the settlement of the new State, the United States defray the expenses of the march thither, furnish the necessary utensils of husbandry, and such live stock as shall be indispensably necessary for commencing the settlement, and subsistence for three years, to-wit: One ration of bread and meat per day to each man, woman and child ; and to every soldier a suit of clothes annually,—the cost of these articles to be charged to the accounts of arrearages due to the members of the association respectively.

“ 10. That for the security of the State against Indians, every officer and soldier go armed,—the arms to be furnishd by the United States and charged to the accounts of arrearages. Ammunition to be supplied in the same way.

“ 11. That a constitution for the new State be formed by the members of the new State previous to their commencing the settlement, two-thirds of the associators present at a meeting duly notified for that purpose agreeing therein. The total exclusion of slavery from the State to form an essential and irrevocable part of the Constitution.

“ 12. That the associators so assembled agree on such general rules as they shall deem necessary for the prevention and punishment of crimes, and the preservation of peace and good order in the State, to have the force of laws during the space of two years, unless an Assembly of the State, formed agreeably to the Constitution shall sooner repeal them.

“ 13. That the State so constituted shall be admitted into the confederacy of the United States, and entitled to all the benefits of the Union, in common with the other members thereof.

“14. That at the above mentioned meeting of the associators, delegates be chosen to represent them in the Congress of the United States, to take their seats as soon as the new State shall be erected.

“15. That, the associators having borne together as brethren the dangers and calamities of war, and feeling that mutual friendship which long acquaintance and common sufferings give rise to; it being also the obvious dictate of humanity to supply the wants of the needy, and alleviate the distresses of the afflicted—it shall be an inviolable rule, to take under the immediate patronage of the State the wives and children of such associators, who, having settled there shall die, or, by cause of wounds or sickness, be rendered unable to improve their plantations, or follow their occupations, during the first twenty-one years. So that such destitute and distressed families shall receive such public aids, as, joined with their own reasonable exertions, will maintain them in a manner suitable to the condition of the heads of them; especially that the children, when grown up, may be on a footing with other children, whose parents, at the original formation of the State, were in similar circumstances with those of the former.”

This proposition contains the first known suggestion of an appropriation of lands by the government for the support of schools and of the prohibition of slavery in the North-west Territory. While in its preparation he doubtless consulted others, yet in default of a better record, whatever of credit is due the originator, properly belongs to Timothy Pickering. In a letter to Samuel Hodgdon* April 7th, 1783, enclosing a copy of this plan, Colonel Pickering writes that the proposition is in “the hands of General Huntington and General Rufus Putnam for consideration, amendment and suggestion.” On the 14th of April he again wrote Mr. Hodgdon that Gen. Rufus Putnam was “warmly engaged in the new planned settlement on the Ohio.” In General Putnam’s hands this plan soon took a practical form. On the 16th of June, 1783, he forwarded

* Life of Timothy Pickering, Volume 1, pages 457-461.

to General Washington, to be transmitted by him to Congress, a petition signed by 288 officers of the Continental line, stating that the signers are informed that the tract of country, as described in Colonel Pickering's proposition, is "not claimed as the property of or within the jurisdiction of any particular State," that it is of sufficient extent, "the land of such quality and situation" as may induce Congress to form it into a distinct government in time to be admitted as one of the States. They, therefore pray that the lands to which they, and other officers and soldiers desiring it are entitled, may be located in that district, and that provision be made for a farther grant of land payable in public securities. In his letter* accompanying this petition, General Putnam refers to the part he has taken in promoting it, and the expectation of the signers that he will pursue measures to have it laid before Congress. He gives at length reasons why it should be granted, and expresses the hope that the land will be surveyed in townships six miles square, and in calculating the amount available for location of army warrants and sales, deducts 3,040 acres in each township for schools, ministry and waste lands. June 17th, General Washington forwarded the petition, with a copy of General Putnam's letter, to the President of Congress strongly recommending it. The matter was referred to a committee, who, on the 29th of the following October, reported that Congress could not then make the appropriation of lands asked for.

On the 4th of July, 1783, Congress directed the Paymaster-General to adjust all accounts "between the United States and the officers and soldiers of the American Army," and to "give certificates of the sums which may appear on such settlements, in the form and manner which the Superintendent of the finances of the United States may direct." The cer-

* See Walker's History of Athens County, Ohio, for this letter in full.

tificates were payable in specie, bore interest, and were known as "final settlements."

The presentation of the officers' petition to Congress at once brought up the question of Virginia's claim to the territory north-west of the Ohio river. This claim founded on the conquest of George Rogers Clark had been ceded to the United States by Virginia on the 2d of January, 1781, upon condition that the territory so ceded should be divided into distinct republican States, not less than 100, nor more than 150 miles square, to be admitted into the Union upon the same footing as the other States; that Virginia should be reimbursed for her expenditures in conquering the territory; that the French and Canadian inhabitants who had professed themselves citizens of Virginia should be confirmed in their possessions and protected in their rights; that one hundred and fifty thousand acres of land should be reserved for the officers and soldiers of Clark's regiment, who were engaged in the capture of Kaskaskia and Vincennes, to be located by them in a single tract not more than twice its breadth in length; that sufficient lands between the Scioto and Little Miami Rivers should be reserved to enable Virginia to fulfill her obligations to her Continental troops; and that the remainder of the lands should be the common property of the United States.

In 1779, Maryland had caused to be entered upon the journals of Congress, a declaration "that a country unsettled at the commencement of this war, claimed by the British Crown, and ceded to it by the treaty of Paris, if wrested from the common enemy, by the blood and treasure of the thirteen States, should be considered as common property." In 1778 New-Jersey made a similar declaration. June 20th, 1783, New Jersey presented to Congress a protest against accepting the cession on the terms demanded by Virginia as being "far

short of affording that justice which is equally due to the United States at large." The cession* was not finally completed until March 1st, 1784, and then substantially upon the original conditions. A committee consisting of Thomas Jefferson, Samuel Chase and David Howell, was appointed to prepare an ordinance for the government of the Western Territory. The ordinance as first reported by this committee contained an article prohibiting slavery after the year 1800 in any of the States formed from the Territory. This clause was stricken out and the ordinance without any slavery restriction became a law April 23d, 1784. It provided a mode for the temporary government of the Territory, divided it into States by parallels of latitude and meridian lines, in such manner as to make about ten States north-west of the Ohio river, specified the time, manner and conditions of their admission into the Union, and laid down certain principles to be "formed into a charter of compact," as the basis of both temporary and permanent governments.

Messrs. Jefferson, Williamson, Howell, Gerry and Read, were appointed a committee to "ascertain a mode for locating and disposing of lands in the Western Territory." On the 10th of May they reported an ordinance providing that when the Territory shall have been purchased from the Indians it shall be laid off into States and for purposes of sale divided by north and south and east and west lines into hundreds of ten geographical miles square (each mile containing $6086\frac{4}{10}$ feet), and these hundreds into lots of one mile square, or $850\frac{4}{10}$ acres each. Public securities and army warrants were made receivable in payment for lands. No reservations were made for schools or the ministry. Pending the formation of a temporary government in any of the States to be formed, lands

* New Jersey voted "no;" South Carolina divided; Maryland not present.

therein were to pass in descent and dower according to the custom known in common law by the name of gavelkind and should be transferable by deed or will proved by two witnesses. When a temporary government was formed the lands were to be subject to its laws and were never in any event to revert to the United States. On the day this ordinance was reported Mr. Jefferson was appointed Minister to France, and had nothing farther to do with any legislation affecting the northwest Territory. On the 28th of May 1784, the farther consideration of this ordinance was indefinitely postponed.

On the 5th of April, 1784, General Rufus Putnam wrote to General Washington that he was still greatly interested in the settlement of the Ohio country, and had spent much of his time since leaving camp in informing himself and others as to its nature and situation and the practicability of removing there. He expresses the opinion that thousands of persons from Massachusetts will remove to Ohio as soon as Congress makes provision for granting lands there and settlements can be made with safety—provided action is not too long delayed. He asks General Washington to ascertain, if possible, the intention of Congress respecting the officers petition and that he will recommend some one in Congress, “acquainted with and attached to the Ohio cause,” with whom he may open correspondence. General Putnam feared to trust the Massachusetts members, for though “very worthy men,” yet they might oppose so great an emigration from their State—besides Massachusetts had lands of her own to sell. General Washington* replied from Mount Vernon, June 2d, that in his recent visit to Congress, then at Annapolis, his inquiries

*The letters of General Putnam and General Washington are printed in full in Walker's History of Athens County, Ohio. The original of General Washington's letter is in the Library of Marietta College.

were directed solely to this matter and the establishment of peace. Nothing decisive would likely be done as to the officers' petition during that session which was to close on the following day. As the next Congress would be largely composed of new members he could not then recommend a proper correspondent.

On the 21st of January, 1785, the United States acquired by a treaty made at Fort McIntosh, with a part of the Indians claiming it, a title to the greater part of the present State of Ohio. March 1st, 1785, Colonel Timothy Pickering wrote Mr. Elbridge Gerry, then a member of Congress from Massachusetts, asking him what plan will probably be adopted "for disposing of those lands which lie north-west of the Ohio." Mr. Gerry was about to return home. He enclosed to Colonel Pickering a copy of the proposed land ordinance of 1784, and requested him to communicate his views to Rufus King, also a member of Congress from Massachusetts. On the 8th of March, Colonel Pickering wrote* at great length to Mr. King making various suggestions as to the manner of surveys and sales of the lands. He says further that, in looking over the ordinance adopted for the government of the Territory, and the proposed land ordinance he observes that there is in the first, no clause prohibiting slavery, and in the second, "no provision made for ministers of the gospel, nor even for schools and academies. The latter might have been brought in view, though, after the admission of *slavery* it was right to say nothing of *Christianity*," to introduce slaves into a country where none now exist, he declares, "can never be forgiven. For God's sake then let one more effort be made to avert so terrible a calamity. The fundamental constitutions for those

*See Life of Timothy Pickering. Volume 1, Chapter 36, for his correspondence with Gerry and King.

States are yet liable to alterations, and this is probably the only time when the evil can certainly be prevented." March 16th, Rufus King offered in Congress the following resolution which was referred to a committee :

" *Resolved*, that there shall be neither slavery nor involuntary servitude in any of the States described in the resolve of Congress of the 23d of April, 1784, otherwise than in the punishment of crimes, whereof the party shall have been personally guilty ; and that this regulation shall be an article of compact, and remain a fundamental principle of the constitution between the original thirteen States, and each of the States described in the said resolve of the 23d of April, 1784."

On the 14th of April, 1785, the committee, to whom this resolution was referred, reported favorably to its passage. On the same day a new ordinance for the survey and sale of the western lands was also reported. On the following day (April 15th), Rufus King wrote to Colonel Pickering.

" The best return in my power to make you for your ingenious communications on the mode of disposing of the western territory, is to enclose for your examination the form of an ordinance reported to Congress on that subject. You will find thereby that your ideas have had weight with the committee who reported this ordinance ; and I have only to add, that I shall hold myself particularly obliged by your further communications on this subject.

I likewise enclose you the report of a committee on a motion for the exclusion of slavery from the new States. Your ideas on this unjustifiable practice are so just, that it would be impossible to differ from them."

The journals of Congress have no record of any action on the resolution prohibiting slavery after its commitment. Soon after this correspondence with Mr. King, Colonel

Pickering purchased a large tract of land in Pennsylvania and took no further special interest in a settlement west of the Ohio.

The ordinance for ascertaining a mode for the survey and sale of the lands, passed May 20th, 1785. It was much changed from that prepared by Mr. Jefferson in 1784. Instead of hundreds it divided the land into townships six miles square, and these townships into sections of 640 acres each. Surveys were to be made by a surveyor to be chosen from each State, under the general direction of the Geographer Thomas Hutchins. As soon as seven ranges west from the Pennsylvania line were completed a report was to be made to the Secretary of War; one-seventh part of the lands was to be, by him, selected by lot to fulfill the engagements of Congress to the Continental Army, four sections in each township were reserved for future sale by the government, one section in each township was set apart for the support of schools in that township, the remainder was to be offered at public sale, at the price of one dollar per acre, payable in specie or public securities at par. Township number one, in range number one, was to be sold entire, except the reservations stated, number two in the same range by sections, and so alternately through the ranges.

General Rufus Putnam was chosen as the surveyor for Massachusetts. Having previously accepted employment from that State he was not able then to assume the duties of the position, and at his suggestion, General Benjamin Tupper was temporarily selected in his place. The surveyors went to Pittsburgh in the autumn of 1785, but owing to the hostile attitude of the Indians did not go farther. General Tupper returned to Massachusetts in January, 1786. The accounts he had received while in Pittsburgh concerning the Ohio country were such as to confirm him in his intention of removing there as soon as possible. Immediately upon his return he visited

General Rufus Putnam at his home in Rutland. After a conference, lasting the entire night, the two united in a call, which was published in various newspapers in Massachusetts, January 25th, 1786, requesting all officers and soldiers in the late war who were entitled to receive lands in the Ohio country, and all citizens who desired "to become adventurers in that delightful region," to meet in their various counties and choose delegates to a meeting to be held in Boston, on March first, next, with a view to form an association by the name of the Ohio Company to purchase lands and effect a settlement. In response to this call eleven delegates, representing eight counties in Massachusetts, met at the Bunch of Grapes Tavern in Boston, March first, 1786. The meeting continued in session until March third, when articles of agreement were adopted which had been prepared by a committee consisting of General Rufus Putnam, Rev. Manasseh Cutler, Major Winthrop Sargent, Col. Brooks and Capt. Cushing.

By these articles it was agreed to form an association by the name of the Ohio Company, with a capital of one million dollars in Continental specie certificates, divided into one thousand shares, of which no one person was permitted to hold over five. Each share was assessed ten dollars in specie for an expense fund. One years interest on the certificates was to be retained by the company for the same purpose. The sole object of the association was declared to be, to purchase lands in the western territory for the benefit of the company and to promote a settlement thereon.

January 31st, 1786, a treaty was made at Fort Finney with the Wyandott, Delaware and Shawnee Indians, by which they accepted from the United States certain reservations and ceded to them all title or pretense of title to the rest of the North-west Territory. On the 8th of May following, a detach-

ment of troops under Major Doughty arrived at the mouth of the Muskingum river and commenced to build a fort on its western bank, thereafter known as Fort Harmar. In July, the surveyors under charge of Captain Hutchins commenced work. By December, the first seven ranges west from the Pennsylvania line were completed.

Everything now seemed to be in readiness for the contemplated settlement. All adverse claims to the soil had been quieted; a method of survey and sale of the lands had been agreed upon and a form of government for the Territory adopted. On the 8th of March, 1787, a meeting of the Ohio Company was held at Brackett's Tavern in Boston. It was announced, that, while but two hundred and fifty shares had actually been subscribed, parties could readily be found to take the remainder, provided a favorable contract for purchase of a compact body of lands could be made with Congress. Rufus Putnam, Samuel H. Parsons and Manasseh Cutler were elected directors and empowered to treat with Congress. Winthrop Sargent was chosen Secretary. In May, General Parsons visited Congress. A committee was appointed to confer with him. To them he proposed a purchase of lands on the Scioto. The shareholders hearing of it were generally dissatisfied, as they preferred a location on the Muskingum extending west to the Big Kanawha.*

The location of a million or more acres of land on the Scioto, would have covered only the bottom lands on the eastern bank of the Scioto river† and on the Ohio river front. Within the tract there would have been no navigable streams, and, except Salt creek and Little Scioto, none embracing any considerable area of valley lands. A location bounded on the

* Manuscript of General Rufus Putnam.

† Until the Virginia Military Lands were definitely located, the lands between the Scioto and Little Miami could not be sold.

east by the line of the seven ranges, which intersects the Ohio river about nine miles above the mouth of the Muskingum, and extending west to the mouth of Big Kanawha would embrace a great part of the Muskingum river and the Big Hockhocking, both navigable for such water craft as were then in use, as well as the rich valleys of Leading creek, Shade river, Little Hockhocking, Federal creek, Wolf creek and Duck creek, and, because of the winding course of that stream between the Muskingum and Big Kanawha, would have the largest possible front on the Ohio river. The government had established a fort at the mouth of the Muskingum. The surveyors employed on the seven ranges, among whom were such influential members of the Ohio Company as General Benjamin Tupper and Major Sargent, had given the most favorable account of the lands along its waters. Many writers have criticized the location of the Ohio Company lands as comprising the most sterile and uninviting portion of the North-west Territory. There is ground rather for surprise, that, in the then condition of things, any other location was seriously considered.

No action was taken upon General Parson's petition. In June, Doctor Cutler was requested to go to New York. After full consultations with Generals Putnam and Parsons, in which the principles upon which he was to endeavor to secure a contract from Congress for lands, were settled, Doctor Cutler set out upon his journey, reaching New York, July 5th, 1787. On the 6th he prepared and presented to Congress the application of the Ohio Company "for the purchase of lands in the western country." A committee, consisting of Carrington, King, Dane, Madison and Benson, was appointed "to agree on terms of negotiation, and report." On the 7th and 9th he met Thomas Hutchins, "Geographer to the United States," as he

was styled, who gave him "the fullest information of the western country from Pennsylvania to the Illinois," and advised him "by* all means to locate on the Muskingum which was in his opinion the best part of the whole western country."

When Doctor Cutler arrived in New York, a new ordinance, drawn by Nathan Dane of Massachusetts, establishing a mode of government for the western Territory was before Congress. It had passed to a third reading May 10th; its farther consideration had been temporarily postponed. Owing to the lack of a quorum, Congress, after May 11th, held no meeting again for the transaction of business until July 6th, when the ordinance was referred to a committee consisting of Carrington and R. H. Lee, of Virginia; Dane, of Massachusetts; Smith, of New York; and Kean, of South Carolina. This ordinance simply provided a mode of government for the Territory. Peter Force, writing in 1847, thus speaks of it. "It had then (July 6th), made no further progress in the development of those great principles for which it has been distinguished as one of the greatest monuments of civil jurisprudence. It made no provision for the equal distribution of estates. It said nothing of extending the fundamental principles of civil and religious liberty—nothing of the rights of conscience, knowledge or education. It did not contain the articles of compact which were to remain unaltered forever unless by common consent." When Doctor Cutler presented his petition for purchase of lands he was furnished a copy of this bill, "with leave to make remarks and propose amendments." On the 10th of July he returned it, having proposed several amendments. On the following day the committee reported a new ordinance, the anti-slavery clause (which had been agreed upon in committee,

* These quotations are from Doctor Cutler's manuscript journal.

but Mr. Dane feared at first to offer), was added on the 12th, and it became a law on the 13th. All of the amendments proposed by Doctor Cutler were adopted, except one which was that the settlers should not be subjected to Continental taxation until entitled to a full representation in Congress.*

This ordinance is the basis of the constitutions of each of the north-western States. It may, therefore, be of interest to compare it with the Jeffersonian ordinance of 1784, which it repealed, and to trace the origin of its various provisions.

The ordinance of 1784 provided that the residents in each or any of the new States proposed to be formed might, upon application to Congress, obtain permission to form a temporary government by selecting the constitution and laws of any of the existing States, subject however to alteration by a legislature of their own choosing. On obtaining a population of twenty thousand, they might call a convention and form a permanent constitution and government. Whenever any of the States so formed should have, of free inhabitants, as many as the least populous of the original thirteen States, it might be admitted into the Union. The only conditions were that both temporary and permanent governments should be republican, and should be formed on certain principles stated to comprise a charter of compact. These principles in substance were, that the primary ownership by the United States of the soil should be recognized, non-resident owners should not be discriminated against, the new States should, when admitted, assume their proportion of the Federal debt and in all respects be upon the same footing as the old States.

The ordinance of 1787, created the entire north-western territory into a single governmental district, subject to future division into two. The temporary government was composed

*Dr. Cutler's manuscript journal.

of governor, secretary and three judges, appointed by Congress, each of whom should have a freehold estate in the district; the governor of one thousand acres: the secretary and judges each five hundred. At first the governor and judges, or a majority of them, were to make and execute all laws, criminal and civil, to be selected from the laws in force in any of the existing States and subject to the approval of Congress. When there were five thousand free male inhabitants of full age in the district, the governor could direct the election of a legislature to consist of one member for each five hundred free male inhabitants, until the number reached twenty-five, when the future apportionment was to be made by the legislature. No person was eligible for election as representative unless he had a free-hold estate in two hundred acres of land in the district, and no one could vote unless he held, in fee simple, fifty acres. The legislature thus chosen was to submit to Congress ten names; from these Congress was to select five to constitute a legislative council. Laws were then to be made by the governor, legislative council and house of Representatives, in all cases to conform to the principles of the ordinance. The governor had an absolute veto power and could convene, prorogue or dissolve the assembly at his will. When there were sixty thousand free male inhabitants, within limits fixed as the boundaries of the States to be formed, they might be admitted into the Union with a constitution and laws of their own, to be republican and conform to the principles of the ordinance.

The ordinance of 1784 recognized to the fullest extent the dogma of Squatter Sovereignty, the right of the people of the territory to form and regulate their domestic institutions in their own way. The ordinance of 1787 as completely denied them any influential voice in legislation.

The difference is so striking as to provoke an inquiry into the causes. These may be found in the growing sentiment of nationality, consequent upon the wretched weakness of the central government then daily becoming more evident and in the dangerous situation of the Territory at that time. England from her vantage ground in Canada was waiting and watching over the border for the disintegration of the Confederacy that she might repossess her own. Spain, securely planted at the mouth of the Mississippi, looked forward to an early day when her power should extend along all of its tributaries. The only organized settlements in the territory were at Kaskaskia and Vincennes, whose inhabitants were of French descent and, left to choose, would naturally prefer the laws and guardianship of their mother country. For the protection and defence of the common property therefore, it was essential that there should be a sovereign power in the common government.

The form of government adopted is the same (except in minor points) as that in the ordinance which passed to a third reading May 10th, and as heretofore stated was probably prepared mainly by Nathan Dane.

The second section of the ordinance provides for the equal distribution of estates, and is derived from the proposed land ordinance of 1784 which was probably drawn by Thomas Jefferson and Elbridge Gerry. Six articles of compact to remain forever unalterable except by common consent, are stated to "extend the fundamental principles of civil and religious liberty," and to form the basis "of all constitutions, laws and governments, which forever hereafter shall be formed in the said territory." The fourth article comprises all the articles of compact contained in the ordinance of 1784, except that providing the manner and condition of the admission of the States into the Union, and adds a pro-

vision that the navigable waters, leading into the Mississippi and St. Lawrence, and the portages between, shall be common highways, forever free to all citizens of the United States. The fifth article; that the consent of Virginia being obtained, the territory shall be divided, in a manner stated, into not less than three, or more than five States, any of which may be admitted on attaining a population of sixty thousand free inhabitants. This division into a smaller number of States than contemplated in Virginia's deed of cession was first proposed by James Monroe, in Congress, July 7th, 1786. The sixth article forever prohibits slavery except for punishment of crime. The first and second articles are taken mainly from the Massachusetts constitution of 1780, and their insertion here is claimed by Nathan Dane.* They provide that no person demeaning himself in an orderly manner shall be molested on account of his religious sentiments—people with no religion were then unknown to the law—that the inhabitants shall be entitled to trial by jury and *habeas corpus*, a proportionate representation in the legislature, that no cruel or unusual punishments shall be inflicted, and that private property shall not be taken for public good without full compensation. The last clause of article second provides that no law shall ever be enacted in any manner affecting private contracts previously in good faith made. The third article declares that, “Religion, morality and knowledge being essential to good government; schools and the means of education shall be forever encouraged,” and that the utmost good faith must always be observed toward the Indians. The clause in the second article concerning private contracts and the whole

*It is probable that Carrington, of Virginia, had something to do with framing the ordinance. He was chairman of the committee, and was also chairman of the committee to whom the petition of the Ohio Company was referred. He was a warm friend of Doctor Cutler, and became the owner of five shares in the Ohio Company.

of the third article were unquestionably * among the amendments proposed by Doctor Cutler. The prohibition of slavery was also insisted upon by him on behalf of the Ohio Company. The Ohio Company had a direct personal interest in the preservation of the obligations of private contracts, and in the maintenance of good faith with the Indians. The grants of land asked for in their petition to Congress for the support of the ministry and the establishment of an University, would have been of little value without the mandate to the legislature to foster religion and encourage schools. The entire ordinance is but the fulfillment of the idea contained in the original proposition of Timothy Pickering in 1783, that the settlers of the proposed new State should, before removing to it, form for its government a completed constitution, an essential part of which should be the total and irrevocable prohibition of slavery.

On the evening of July 10th, Doctor Cutler left New York for a visit to Philadelphia. Major Sargent who had preceded him to New York, remained to watch the progress of the negotiation. Doctor Cutler returned on the evening of the 17th. Ascertaining that the ordinance for the government of the Territory had passed in the desired form, he urged immediate action upon the petition of the Ohio Company. Much to his surprise he found a considerable opposition. He applied to Colonel William Duer, Secretary of the Board of Treasury, a man of high social standing, reputed great wealth, and the intimate personal and political friend of Washington and Hamilton, to assist him. On the 19th, Congress passed an ordinance stating terms of a contract for the sale of lands, which Doctor Cutler refused to accept. On the 20th, Colonel Duer came to him with "proposals from a number of the principal characters of the city to extend the contract and take

*For a very complete and able discussion of Doctor Cutler's agency in forming the Ordinance of 1787, see article in *North American Review*, for April, 1876, by Wm. F. Poole.

in another company, but that it should be kept a profound secret." This plan, as explained by Colonel Duer and advocated by Major Sargent, struck Doctor Cutler favorably. That evening he spent closeted with Colonel Duer and agreed with him to purchase lands for another company if terms could be obtained. On the 21st in conversation with members of Congress he offered to renew the negotiation and extend the purchase to the Scioto if Congress would accede to the proposed terms. On the 23d, Congress passed another ordinance empowering the Board of Treasury to complete the contract for sale of the lands. This ordinance* did not fully accord with Doctor Cutler's wishes, but left "room for negotiation." On the evening of that day he found it would much assist the closing of the contract if General St. Clair, then President of Congress, were appointed governor of the north-western Territory instead of General Parsons, as was the desire of the principal members of the Ohio Company. He therefore declared to General St. Clair's friends that he would be entirely satisfied to have General Parsons appointed first judge and Major Sargent, secretary of the Territory, and that he would cheerfully assist in securing the appointment of General St. Clair as governor. He also urged the appointment of General Rufus Putnam as one of the judges. On the 24th the Board of Treasury enclosed to him the resolutions of Congress, and requested to know if he was ready to close a contract. As the contemplated purchase was now of much greater magnitude than when the Ohio Company only was in view, Doctor Cutler requested Major Sargent to join with him, though he "had not been formally empowered to act." Sargent readily assented. They jointly prepared a letter† to the Board of Treasury, stating the

*See Appendix.

†See Appendix.

only terms they would accept. On the 27th, after active work on the part of Doctor Cutler, Colonel Duer, Major Sargent and all their friends, an ordinance* passed Congress, authorizing the Board of Treasury to close a contract on the terms stated in Cutler and Sargent's letter "without the least variation." When Doctor Cutler received notice of the passage of the ordinance, he went immediately to the Board of Treasury with Major Sargent, and after making a general verbal adjustment and agreeing upon the 27th of the next October, as the day on which the first payment of five hundred thousand dollars for the Ohio Company should be made, left Sargent to complete what remained to be done at that time and started home the same evening. In Doctor Cutler's manuscript journal, from which the foregoing account is compiled, under this date he writes: "By this ordinance we obtained the grant of near five million acres of land, amounting to three and one-half million of dollars. One and a half million of acres for the Ohio Company and the remainder for a private speculation in which many of the principal characters in America are concerned. Without connecting this speculation, similar terms and advantages could not have been obtained for the Ohio Company." This speculation was the Scioto Company. Colonel William Duer projected it. He had influence enough in Congress to secure the passage of the ordinance for the Ohio Company purchase, by connecting the Scioto speculation with it. Without it Doctor Cutler's negotiation for the Ohio Company was a probable failure; with it, it was an assured success and upon terms dictated by himself. The "terms and advantages" obtained by the Ohio Company more favorable than they had a right to expect, †were, the reduction in price of

*See Appendix.

†Except the location of its lands in a compact body the Ohio Company had no reason to expect any terms more favorable than those stated in the ordinance of 1785.

the lands from one dollar to two thirds of a dollar per acre, the admission of land warrants, acre for acre, in payment for one-seventh of the gross amount of the purchase, the grant of one section in each township in the limits of the purchase for the purposes of religion, and the donation of two entire townships for the endowment of an University. Colonel Duer procured a number of subscriptions to the shares of the Ohio Company and agreed to assist in making the* first payment to the Board of Treasury if it should be necessary. The Scioto contract was but an option of purchase, and its life depended upon the punctual fulfillment by the Ohio Company of its obligations to the Board of Treasury. To protect itself against any possible trouble in the future, the Ohio Company, by this negotiation, therefore secured beyond peradventure, the aid of those who were then the most influential public men in America.

The Ohio Company was now fairly begun. It had obtained a contract for the purchase of lands on terms more favorable than its most sanguine friends expected. The form of government of the Territory had been revised at its dictation. For the first time since the close of the Revolution there was peace along the western border. All the conditions of success seemed to be fulfilled.

*Colonel Duer actually advanced \$142,000.

APPENDIX.

APPENDIX.

A.

[From Journals of Congress, Vol. 4. Appendix, p. 17.]

July 23, 1787.—The report of a committee consisting of Mr. Carrington, Mr. King, Mr. Dane, Mr. Madison and Mr. Benson, amended to read as follows, viz :

That the Board of Treasury be authorized and empowered to contract with any person or persons for a grant of a tract of land, which shall be bounded by the Ohio, from the mouth of the Scioto to the intersection of the western boundary of the seventh range of townships now surveying; thence by the said boundary, to the northern boundary of the tenth township from the Ohio; thence by a due west line to the Scioto; thence by the Scioto to the beginning, upon the following terms, to-wit: The tract to be surveyed and its contents ascertained by the Geographer, or some other officer of the United States, who shall plainly mark the said east and west line, and shall render one complete plat to the Board of Treasury, and another to the purchaser or purchasers. The purchaser or purchasers, within seven years from the completion of this work, to lay off the whole tract at their own expense into townships and fractional parts of townships, and to divide the same into lots, according to the land ordinance of the 20th of May, 1785; complete returns whereof to be made to the Treasury Board. The lot No. 16 in each township, or fractional part of a township, to be given perpetually for the purposes contained in the said ordinance. The lot No. 29 in each township, or fractional part of a township, to be given perpetually for the purposes of religion. The lots Nos. 8, 11 and 26, in each township, or fractional part of a township, to be reserved for the future disposition of Congress. Not more than two complete townships to be given per-

petually for the purposes of an university, to be laid off by the purchaser or purchasers, as near the centre as may be (so that the same shall be of good land), to be applied to the intended object by the Legislature of the State. The price to be not less than one dollar per acre for the contents of the said tract, excepting the reservations and gifts aforesaid, payable in specie, loan-office certificates reduced to specie value, or certificates of liquidated debts of the United States, liable to a reduction by an allowance for bad land, and all incidental charges and circumstances whatever; *provided*, that all such allowance shall not exceed, in the whole, one-third of a dollar per acre. And, in making payment, the principal only of the said certificates shall be admitted, and the Board of Treasury, for such interest as may be due on the certificates rendered in payment as aforesaid, prior to January 1st, 1786, shall issue indents for interest to the possessors, which shall be receivable in payment, as other indents for interest, of the existing requisitions of Congress; and for such interest as may be due on the said certificates, between that period and the period of payment, the said Board shall issue indents, the payment of which to be provided for in future requisitions or otherwise. Such of the purchasers as may possess rights for bounties of land to the late army, to be permitted to render the same in discharge of the contract, acre for acre; *provided*, that the aggregate of such rights shall not exceed one-seventh part of the land to be paid for; and *provided further*, that there shall be no future claim against the United States on account of the said rights. Not less than 500,000 dollars of the purchase money to be paid down upon closing the contract, and the remainder upon the completion of the work to be performed by the Geographer, or other officer, on the part of the United States. Good and sufficient security to be given by the purchaser or purchasers for the completion of the contract on his or their part. The grant to be made upon the full payment of the consideration money, and a right of entry and occupancy to be acquired immediately, for so much of the tract as shall be agreed upon between the Board of Treasury and the purchasers.

July 23, 1787.—Ordered, That the above be referred to the Board of Treasury to take order.

B.

LETTER OF CUTLER AND SARGENT TO THE BOARD OF TREASURY.

[From Journals of Congress, Vol. 4, Appendix, p. 17.]

“ July 26, 1787.

“ New York, July 26, 1787.

“ GENTLEMEN :

“ We observe, by the act of the 23d instant, that your honorable Board is authorized to enter into a contract for the sale of a tract of land therein described, on certain conditions expressed in the act. As we suppose this measure has been adopted in consequence of proposals made by us, in behalf of ourselves and associates, to a Committee of Congress, we beg leave to inform you that we are ready to enter into a contract for the purchase of the lands described in the act ; *provided*, you can conceive yourselves authorized to admit of the following conditions, which in some degree vary from the report of the committee, viz :

The subordinate surveys shall be completed as mentioned in the act, unless the frequency of Indian irruptions may render the same impracticable without a heavy expense to the company.

The mode of payment we propose is, half a million of dollars when the contract is executed ; another half million when the tract, as described, is surveyed by the proper officer of the United States ; and the remainder in six equal payments, computed from the day of the second payment.

The lands assigned for the establishment of an university to be as nearly as possible in the centre of the first million and a half acres of we shall *pay for* ; for to fix it in the centre of the proposed purchase, might too long defer the establishment.

When the second payment is made, the purchasers shall receive a deed for as great a quantity of land as a million of dollars will pay for at the price agreed on ; after which we will agree not to receive any further deeds for any of the lands purchased, only at such periods, and on such conditions as may be agreed on betwixt the Board and the purchasers.

As to the security, which the act says shall be good and sufficient, we are unable to determine what those terms may mean in the contemplation of Congress, or of your honorable Board; we shall, therefore, only observe that our private fortunes, and that of most of our associates, being embarked in the support of the purchase, it is not possible for us to offer any adequate security but that of the land itself, as is usual in great land purchases.

We will agree so to regulate the contracts, that we shall never be entitled to a right of entry or occupancy, but on the lands actually paid for, nor receive any deeds till our payments amount to a million of dollars, and then only in proportion to such payment. The advance we shall always be under without any formal deed, together with the improvements made on the lands will, we presume, be ample security, even if it was not the interest as well as the disposition of the company, to lay the foundation of their establishment on a sacred regard to the rights of property.

If these terms are admitted we shall be ready to conclude the contract.

We have the honor to be, with the greatest respect, for ourselves and associates, gentlemen,

Your obedient, humble servants,

MANASSEH CUTLER,
WINTHROP SARGENT."

"THE HONORABLE, THE BOARD OF TREASURY."

"*July 27, 1787.—Ordered,* That the above letter, from Manasseh Cutler and Winthrop Sargent, to the Board of Treasury, containing proposals for the purchase of a tract of land, described in the act of Congress of the 23d instant, be referred to the Board of Treasury to take order; *provided*, that after the date of the second payment therein proposed to be made, the residue shall be paid in six equal and half yearly instalments, until the whole thereof shall be completed, and that the purchasers stipulate to pay interest on the sums due, from the completion of the survey to be performed by the Geographer."

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